

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

TINA MARIE TAYLOR,

Plaintiff,

v.

Civil Action No.
1:13-CV-790 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

ERWIN, McCANE & DALY
23 Elk Street
Albany, NY 12207

THOMAS C. ERWIN, ESQ.

FOR DEFENDANT

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GRAHAM MORRISON, ESQ.
Special Assistant U.S. Attorney

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on May 13, 2014, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18 (formerly, General Order No. 43) which was issued by the Hon. Ralph W. Smith, Jr., Chief United States Magistrate Judge, on January 28, 1998, and subsequently amended and reissued by Chief District Judge Frederick J. Scullin, Jr., on September 12, 2003. Under that General Order an action such as this is considered procedurally, once issue has been joined, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.
- 3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: May 22, 2014
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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TINA MARIE TAYLOR,

Plaintiff,

vs.

13-CV-790

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----x

Decision rendered on May 13, 2014

James Hanley Federal Building, Syracuse, New York,

HONORABLE DAVID E. PEEBLES, United States

Magistrate-Judge, Presiding.

A P P E A R A N C E S (by telephone)

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Eileen McDonough, RPR, CRR
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1 THE COURT: Well, I appreciate both of your
2 briefings and oral argument. I have before me a motion for
3 judgment on the pleadings, cross-motions actually, in a case
4 seeking judicial review under 42, United States Code, Section
5 405(g) of a Commissioner's determination finding that the
6 plaintiff was not disabled at the relevant times.

7 By way of background, the plaintiff is a female
8 with a date of birth in December 1970. She was 37 years old
9 at the alleged onset date, 41 at the date of hearing. She
10 has one year of college education. It's unclear whether
11 she's married or not. She has a partner. At one point it
12 indicates I think during the hearing transcript she's not
13 married but there is a reference in the record in one of her
14 medical records to being married to her partner. She has no
15 children.

16 She last worked in November of 2008. She has a
17 work history that includes working as a home health care
18 provider and some other short-term jobs such as cashier.

19 She clearly has a lumbar condition, although it is
20 relatively modest. She underwent Magnetic Resonance Imaging
21 testing in April of 2011. And that is repeated at both 234
22 and 336 of the Administrative Transcript. Reflects modest
23 bulging. She testified in her hearing that she doesn't carry
24 anything more than 20 pounds. Certainly consistent with
25 light duty under the Commissioner's regulations.

1 She suffers from degenerative disc disease
2 according to the MRI. She's undergone physical therapy,
3 chiropractor treatment, injections, spinal stimulator and
4 pain medications.

5 She also suffers from post-traumatic stress
6 disorder, depression and anxiety. She's been securing
7 treatment at the Caleo Counseling Center. She sees
8 Dr. Donald Kowalski monthly mostly for the prescription of
9 drugs and has sessions with other providers at Caleo more
10 frequently. She underwent one brief hospitalization for
11 three days in March of 2011. The record doesn't contain any
12 information or records concerning that hospitalization.

13 She applied in March of 2011 for disability
14 insurance benefits and supplemental security income alleging
15 an onset date of November of 2008. After those applications
16 were denied at the agency initial level, a hearing was
17 conducted by an Administrative Law Judge, Robert Wright, on
18 May 15, 2012. ALJ Wright issued a decision on June 6, 2012.
19 And the Social Security Administration Appeals Council denied
20 review on June 18, 2013, making the ALJ's decision a final
21 determination of the agency.

22 In his decision ALJ Wright applied the well-known
23 five step test for determining disability. Concluded at step
24 one that plaintiff had not engaged in substantial gainful
25 activity since the alleged onset.

1 Found that she did suffer from PTSD, depression,
2 anxiety, degenerative disc disease and obesity as
3 constituting severe limitations at step two, but rejected
4 high blood pressure and asthma in light of the fact that they
5 both appear to have been well controlled and, therefore, do
6 not substantially interfere with her ability to perform work
7 functions.

8 At step three he found that she did not meet or
9 equal medically any of the listed presumptively disabling
10 conditions.

11 And step four he concluded that the plaintiff
12 maintains the residual functional capacity to perform light
13 work, subject to limitations including to work, as the
14 Commissioner has argued, in a SVP-1 or 2 position with only
15 occasional decision-making, changes in work setting and
16 interaction with others, and the requirement that she be able
17 to change positions every thirty minutes.

18 Applying that RFC, the Commissioner concluded that
19 the plaintiff is incapable of performing her past relevant
20 work. He applied the grids as a framework, and specifically
21 Rule 202.20, which would have directed a no disabled or not
22 disabled finding. But because of the existence of
23 non-exertional limitations, the testimony of a vocational
24 expert was received and based on a hypothetical which tracks
25 the RFC and plaintiff's other characteristics, the vocational

1 expert concluded that plaintiff could perform as an
2 electrical assembler or a table worker.

3 The standard of review, of course, that the Court
4 must apply is very deferential. Requires me to determine
5 whether correct legal standards were applied and whether the
6 decision was supported by substantial evidence, which is
7 defined as such relevant evidence as a reasonable mind might
8 accept as adequate to support a conclusion.

9 In this case I've considered the arguments of
10 counsel. I find that the RFC determination is supported by
11 substantial evidence. Doesn't appear to be any quarrel with
12 the physical aspects of the RFC finding. Plaintiff herself
13 indicated at page 20 of the Administrative Transcript she can
14 lift 20 pounds. The record is fairly modest when it comes to
15 the extent of her pain and the limitations imposed by it.

16 During many visits to her health care providers for
17 other conditions she doesn't even mention back pain, or if
18 she does, it's dull, moderate, two on a scale of ten, four on
19 a scale of ten, zero on a scale of ten. And Dr. Paolano, who
20 performed a consultative examination on June 15, 2011, found
21 normal range of motion and only localized discomfort.

22 The real issue here, of course, is the mental
23 aspect. The record contains some indication of some serious
24 effect of her mental conditions. At one point there is a GAF
25 finding of 45, that is at page 304 of the record, which would

1 suggest serious symptoms and serious impairment in social,
2 occupational or school functioning. However, there are other
3 also GAF findings of 50 at page 315 of the record, 55, and
4 70. Seventy, of course, is a score that indicates only some
5 mild symptoms or some difficulty in social, occupational or
6 school functioning.

7 The consultative examination of Dr. Dambrocio on
8 June 16, 2014, found only modest limitations. That's
9 examination of the records, as I understand it. Found only
10 modest limitations in four of the twenty categories, and
11 those limitations in my view are adequately reflected in the
12 RFC finding.

13 The consultative examination of Dr. Gina
14 Scarano-Osika on June 11 shows a claimant who is fully
15 oriented, average intellectual functioning, GAF of 70, and
16 does not substantiate the extent of the effect of her mental
17 condition on claimant's claimed ability to work.

18 I reviewed carefully the plaintiff's hearing
19 testimony and it doesn't really bear out the claim that she
20 suffers with frequent anxiety attacks. And I agree with the
21 Commissioner that in any event the Caleo records of
22 plaintiff's treatment don't support that. And so to that
23 extent I think the ALJ's credibility finding is supported by
24 substantial evidence.

25 I find that the hypothetical example given to the

1 vocational expert fairly reflects the RFC finding, which I
2 have also concluded is supported by substantial evidence.
3 And so the vocational expert's testimony supports the finding
4 that the plaintiff was not disabled at the relevant times
5 because she is able to perform two jobs that are available in
6 the national economy.

7 So, I conclude that the finding of the ALJ is
8 supported by substantial evidence and was not the product of
9 improper legal principles. And so I will grant defendant's
10 motion for judgment on the pleadings and dismiss plaintiff's
11 complaint.

12 I'll issue a short form order and attach a copy of
13 this decision. And again I appreciate excellent
14 presentations on the part of both parties. Thank you so
15 much.

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C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Federal Official
Realtime Court Reporter, in and for the United States
District Court for the Northern District of New York,
do hereby certify that pursuant to Section 753, Title 28,
United States Code, that the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.

A handwritten signature in cursive script, reading "Eileen McDonough", is written above a horizontal line.

EILEEN MCDONOUGH, RPR, CRR
Federal Official Court Reporter